



Foreign Contractors of Canadian Registered Charities Carrying out the Canadian Charity's Projects – A Very Simplified View of the Process

By Mark Blumberg (September 20, 2011)

In this brief note I try to suggest 10 steps for a simplified contractor arrangement between a Canadian charity and a foreign charity (the "Foreign Contractor") implementing a project for the Canadian charity.

1) **Due Diligence.** You pick the right contractor or partner to be your Foreign Contractor. Do they have the "reputation, expertise, capacity, or experience" to carry out the task. Does the group have problematic affiliations with political parties or foreign militaries or militias? Due diligence on the foreign contractor is a very important step.

2) **Written Agreement.** A written agreement is put in place between the Canadian Charity and the Foreign Contractor that outlines how the Canadian charity will maintain "direction and control", and supervision over the application of its own funds and resources. It is necessary for the written agreement to comply with the Canada Revenue Agency ("CRA") requirements. But the Contractor Agreement is not the only permissible model. Canadian charities can also conduct foreign activities using their own employees and volunteers, as well as agents, joint ventures or 'cooperative participants'. For further information see Appendix F of the CRA Guidance entitled "What should a written agreement contain?"

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located

at

http://www.globalphilanthropy.ca/index.php/blog/comments/cras_new_guidance_on_foreign_activities_by_canadian_charities/

3) **Description of Activity.** Either party suggests projects that may be suitable. The project must be properly described, including a description of activities, budget, where the activities will take place, when, who will be doing them, etc. This description needs to be appropriate for the size and complexity of the activity. It must be a 'clear, complete and detailed' description of the project. It must be clearly understood to both parties before funds are sent from Canada as to how those funds will be spent.

4) **Governance.** The Canadian charity's board of directors meets and reviews the suggested projects to decide which projects will be funded and outline any changes to the project description. The board of directors of a charity have a fiduciary responsibility under trust law to manage the property of the charity and the board needs to be aware and approving of the use of the charity's funds.

5) **Periodic Transfer.** Funds for approved projects are transferred to the foreign contractor. If the value of the project is small, the funds may be transferred all at once. Bigger projects require periodic transfers, each portion only to be transferred only after appropriate reporting on key milestones.

6) **Separate Activity.** The Foreign Contractor implements the project as approved by the Canadian charity and identifies the project as being separate and part of Canadian charity's charitable activities. If an observer on the scene cannot tell that this project is that of the Canadian charity then it may just be funding the project of the foreign charity which is not permissible.

7) **Real, Ongoing, Active Relationship.** The Canadian charity maintains direction and control through a real, ongoing, active relationship with the contractor. The Canadian charity does not have to be a bossy micromanager but a charity cannot just send large amounts of funds and get reporting at the end of the project without being aware of how the project is proceeding. With e-mail, Skype, scanners etc it is much easier for a Canadian charity to be aware and engaged with what is going on. Although a Foreign Contractor may have substantial discretion in certain respects with a project the Canadian charity should be aware of and approving any substantial changes to the project.

8) **Monitoring and Reporting.** The Canadian charity monitors the project through various means as appropriate. The Canadian Charity receives interim reports where the size of the project warrants it. On completion, the Foreign Contractor provides a final report. The Foreign Contractor reports back to Canadian charity with enough information to allow the Canadian charity to know that its funds were appropriately spent. Depending on the size and type of project it could include the Foreign Contractor providing copies of source documents such as accounts, agreements, receipts, invoices, correspondence, vouchers, sub-contracts, cancelled cheques, staff contracts, payroll records, shipping and customs documents as well as spreadsheets and photos, etc..

9) **Books and Records.** The Canadian charity keeps the required books and records about the project to verify that project was appropriately completed and that funds were well spent. Obviously the contractor has their records but the Canadian charity has to have its books and records in Canada. If the books and records are not in Canada they are not “books and records in Canada” as required by the Income Tax Act. See “Keeping books and records in Canada” at http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html#_Toc260732248

10) **Capital Projects.** If the project is a capital project or capital equipment is bought as part of the project, the Canadian charity retains ownership except in the case as outlined in Appendix B “What if a charity builds or helps build capital property in a foreign country? of the CRA Guidance” at http://www.cra-arc.gc.ca/chrts-gvng/chrts/plcy/cgd/tsd-cnd-eng.html#_Toc260732257

This is a very simplified view of the relationship between a Canadian charity and a foreign contractor. For further information see http://www.globalphilanthropy.ca/index.php/blog/comments/cras_new_guidance_on_foreign_activities_by_canadian_charities/

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